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Reclassification of Major Sources as Area Sources: Northeast States for Coordinated Air Use Management Comments on U.S. Environmental Protection Agency Proposed Revisions

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The Northeast States for Coordinated Air Use Management (“NESCAUM”) filed November 1st comments on the United States Environmental Protection Agency (“EPA”) proposed rule:

Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act

See 84 Fed. Reg. 36304 (July 26, 2019).

NESCAUM describes itself as a regional association of air pollution control agencies representing the following states:

- Connecticut
- Maine
- Massachusetts
- New Hampshire
- New Jersey
- New York
- Rhode Island
- Vermont

EPA previously characterized the proposal as implementing:

. . . the plain language reading of the “major source” and “area source” definition of Section 112 of the Clean Air Act (CAA) and provide that a major source could reclassify to area source status at any time by limiting its potential to emit (PTE) hazardous air pollutants (HAP) to below the major source thresholds of 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAPs.

However, the federal agency stated the potential to emit hazardous air pollutant limits must meet the effectiveness criteria of being legally and practicably enforceable.

A number of environmental organizations had previously filed a Petition for Review in the United States Court of Appeals for the District of Columbia Circuit challenging an EPA memorandum addressing the same issue.

NESCAUM in its November 1st comments states it recognizes the potential of the proposal to:

. . . correct for errors in initial major source classifications and to provide flexibility for major sources to permanently lower emissions of Hazardous Air Pollutants (HAPs) below MACT requirements through pollution prevention measures, it cannot support the rule as written because it creates the potential for increased HAP emissions from some reclassified sources.

Further, concern is expressed that the proposal would allow “backsliding” (i.e., less stringent control) if such sources reclassify under the circumstances allowed in the proposed rule.

By way of summary, NESCAUM states that EPA’s proposal to allow major HAP sources to reclassify to area sources must provide that:

- As specified in enforceable conditions, the source's PTE is below the major source threshold and emissions reductions and limits are consistent with applicable MACT standards;
- The proposed rule is amended to require enforceable conditions specifying that the source's emissions cannot increase due to reclassification;
- If a reclassified source triggers a major source HAP threshold at a later date, that source shall be immediately subject to applicable MACT requirements; and
- Reclassified sources in source categories for which CAA § 112(f) residual risk assessments

A copy of the comments can be downloaded [here](#).